IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3013 OF 2007

IN

SUIT NO.1814 OF 1987

Jerappa son of Hanumappa Gawada .. Plaintiff.
Versus
The State of Maharashtra & Ors. .. Defendants.

ALONGWITH
NOTICE OF MOTION NO. OF 2007
IN
SUIT NO.1814 OF 1987

Jerappa son of Hanumappa Gawada .. Plaintiff.
Versus
The Collector of Bombay & Ors. .. Defendants.

Mr.Jayesh Bhatt for plaintiff.
Mr.S.P.Bharati for defendant No.3.
Ms.Geeta Shastri, A.G.P.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 13th August, 2007.

P.C.:

1. In this suit, which is filed in the year 1987 and the Collector of Bombay so also the State of Maharashtra is a party defendant to the same, right from the inception, they are defendant Nos.1 and 2. The suit which was originally filed in this Court on 8th April, 1987 has been amended on two occasions and in 2005, the 3rd defendant Maharashtra Tourism and Development Corporation ("MTDC" for short) has been impleaded as a party defendant No.3.

2. The fact remains that the Collector of Bombay defendant No.1 and defendant No.2 State of Maharashtra have not filed their written statements. The time stipulated for filing the same after receipt of the writ of summons has expired longtime back. Merely because the suit was not proceeded with or not placed for directions or for issuing and passing further orders as are stipulated in the procedural provisions that the defendants are raising a plea that their written statement, which is ready today and affirmed, be taken on record.

3. Insofar as the defendant Nos.1 and 2 are concerned, the draft Notice of Motion has been also tendered just now alongwith the affidavit which sets out, according to Mrs.Shastri, learned A.G.P., "sufficient cause" for not filing the written statement earlier. In other defendant’s case, Mr.Bharati, appearing for M.T.D.C. states that the written statement is ready and can be filed even today. He states that there is no delay inasmuch as the plaint was amended in the year 2005, impleading the defendant No.3 for the first time and, thereafter, no writ of summons has been served as stipulated in the order and that is how the written

statement was not filed. This is a bonafide impression of the defendant No.3.

4. Defendant Nos.1 and 2 are the Collector of Bombay and the State of Maharashtra itself, whereas, defendant No.3 is a Govt. of Maharashtra Undertaking. If these State bodies are going to exhibit such attitude and approach towards the Court proceedings, then, it is impossible to expect any co-operation and assistance from private parties for early disposal of cases. There is absolutely no reason why in the case of defendant Nos.1 and 2, the enormous and unexplained delay be condoned. In the affidavit-in-support of the draft Motion, which has been handed in, the explanation reads thus :-

> "2. I say that the plaintiffs had filed the suit for declaration that the action of the defendants is illegal and also for mandatory order to reconstruction the suit premises demolished by the defendant and for damages to the tune of Rs.19,40,000/-, Rs.1,70,000/- and Rs.10,00,000/- as set out in Exhibits K, L and M of the plaint. I say that the matter was on Board on 30/07/2007 before the Hon’ble Mr.Justice S.C.Dharmadhikari for direction. The Hon’ble Court has by an order

dated 30/07/2007 directed the matter to be placed for ex-parte hearing as the defendant had not filed the written statement. I say that the plaintiff had taken out interlocutory proceedings by way of notice of motion and chamber summons for amendment. I say that the defendant reply was prepared for these interlocutory proceedings as per the record. I say that inadvertently the para wise comments could not be sent to the office of Government Pleader on the time of receiving the copy of the plaint. I say that as the record is very old and as various officers had been transferred from time to time and the said file inadvertently had not attended. I say that the office of Collector was under impression that once the interim relief is refused, no other steps are required to be taken and, therefore, further steps were not taken till receiving the letter dated 30/07/2007 from the office of the Government Pleader, High Court, Bombay.

I say that in view of the above, this Hon'ble Court may be pleased to condone the delay, if any, in filing the written statement and be pleased to set aside the order dated 30/07/2007 whereby the

matter is placed for ex-parte decree and to take the written statement of defendant Nos.1 and 2 on record. I say that if the reliefs as prayed in Notice of Motion is not granted, then, irreparable loss and prejudice will be caused to the defendant Nos.1 and 2."

5. Miss. Shastri would urge that the term "sufficient cause" be liberally construed and not in such a manner so as to shut out defence of the State. More so, when public interest is at stake. Mr.Bharti would also urge that the written statement could not be prepared under bonafide impression with regard to the rules.

6. While it is true that this Court has taken a view that the provisions of the amended Code of Civil Procedure and more particularly, order VIII Rule I would not apply to the suits filed on the Original Side of this Court and, therefore, the outer limit of 90 days prescribed therein cannot be made applicable for filing of written statement, yet, the High Court, Original Side Rules cannot be construed to mean that the written statement can be filed at any time. This would be making mockery of the Rules prescribing a time limit for filing of written statement.

7. In such circumstances, I am unable to accept the arguments of Miss. Shastri and Mr.Bharti that the procedural requirements stipulated in the Rules having been complied with, the written statement can be taken on record straightaway. However, agreeing with them and taking a liberal view of the term "sufficient cause" and since public interest is involved, the written statements are taken on record. The delay is condoned. However, the written statements would be taken on file subject to payment of costs quantified at Rs.10,000/- by defendant Nos.1 and 2 and Rs.3,000/- by defendant No.3. It is clarified that upon proof of payment of such costs to the plaintiff’s Advocate being produced in this Court, the written statements shall be taken on file and the suit thereafter be placed for framing of issues. If the costs are not tendered, the written statements should not be taken on file and thereafter, the plaintiff would be at liberty to adopt such course of action as is permissible in law. Notice of Motion of the defendant Nos.1 and 2 is directed to be numbered on or before Friday i.e. 17th August, 2007 and both Motions are disposed of accordingly.

(S.C.Dharmadhikari, J.)